

## Planning Commission Staff Report

DATE: May 17, 2007



<b>Case:</b>	9-5-07, Change in zoning for 1.89 acres of the 3.9 acre site from OR-3 office residential to C-2 commercial on property located at 5050 Norton Healthcare Boulevard (Tax Block 3712, Lot Number 8) and being in Louisville Metro.
<b>Project Name:</b>	Corbett's Restaurant/Old Brownsboro Crossing
<b>Location:</b>	5050 Norton Healthcare Boulevard
<b>Owner(s):</b>	McMahan Holdings / DABS Investments, LLC
<b>Applicant:</b>	White Truffle, LLC
<b>Representative:</b>	Joseph Cohen
<b>Project Size/Area:</b>	1.89 Acres
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	16 – Kelly Downard
<b>Case Manager:</b>	<b>Mike Wilcher, Planner II</b>

### Request

Change in zoning from OR-3 to C-2 to permit the conversion of a historic house on the property into a restaurant. The proposal includes demolition of a garage on the site and an expansion on the rear of the existing structure. **A variance and a waiver are requested to permit parking and vehicle maneuvering to encroach into the required rear-yard setback and landscape buffer areas pending the requested rezoning of the residential parcel on the east boundary of the site.** Several mature trees are to be preserved to enhance the outdoor dining area to be located on the existing porch, as well as a terrace adjacent to the porch. In addition, a minor plat will be required to divide the lot into two parcels as shown on the proposed detailed district development plan.

### Staff Recommendation

Staff recommends approval of the requested change in zoning from OR-3 Office-Residential to C-2 Commercial.

### Case Summary / Background

The applicant proposes to rezone the site from OR-3 Office-Residential to C-2 Commercial to allow the conversion of a historic house on the property into a fine dining restaurant. A variance of 33 feet at the greatest extent, and a waiver of 8 feet at the greatest extent, is requested to permit parking and maneuvering to encroach into the 50-foot rear-yard setback area and the 25-foot Landscape Buffer Area if the adjacent OR rezoning request is not approved.

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Furthermore, the proposal includes construction of an expansion on the rear of the existing historic house, which will require the demolition of an existing garage. A monument sign with dimensions of 40 square feet in area and 5 feet in height is proposed at the entrance of the site adjacent to the right-of-way,

**Potential Variance**

<b>Location</b>	<b>Requirement</b>	<b>Request</b>	<b>Variance</b>
<b>Rear-Yard Setback – East Side</b>	50'	17'	33'

**Site Context**

A historic house located on the development site is to be expanded and converted into a restaurant. The proposal includes the demolition of an existing garage to permit construction of the expansion on the rear of the historic house. The proposed 1.89 acre lot to be rezoned is located within the Old Brownsboro Crossings development and is adjacent to C-2 zoned lots to the south, west, and north that are used for commercial purposes, as well as an R-1 zoned lot to the east, which is currently vacant.

***Land Use / Zoning District / Form District***

	<b>Land Use</b>	<b>Zoning</b>	<b>Form District</b>
<b>Subject</b>			
<b>Existing</b>	Vacant Historic Residence	OR-3	Regional Center
<b>Proposed</b>	Restaurant – Outdoor Dining	C-2	Regional Center
<b>Surrounding</b>			
<b>North</b>	Commercial - Retail	C-2	Regional Center
<b>South</b>	Vacant	C-2	Regional Center
<b>East</b>	Vacant	R-1	Regional Center
<b>West</b>	Commercial - Retail	C-2	Regional Center

**Project History**

<b>Project History</b>	<b>Date</b>	<b>Issues addressed / discussion / changes to proposal</b>
Pre-App review	12/19/2006	
Project submittal	1/22/2007	
LD&T review	2/7/2007	
Revision submittal #1	2/23/2007	
Revision submittal #2	N/A	
LD&T meeting	3/22/2007	
PC Public Hearing	5/17/2007	

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Note: The following information represents staff analysis of the subject property with respect to site inspection/observation, sound planning practices, and adopted policies and regulations of the jurisdiction. Materials submitted by the applicant or their representative prior to the deadline for filing information related to cases docketed for this hearing were reviewed and specifically applied in the staff review of this request. The board is advised to consider this staff report as well as new information introduced at the hearing in formulating their decision.

### **Site Inspection Comments & Responses**

1. Provide fire department access to structure.
2. Good use of historic house and good location for fine dining restaurant.
3. Nice plan for tree preservation.
4. Proposed design enhancements will improve site and create popular attraction.

### **Staff Findings**

#### ***Relationship to the Comprehensive Plan – Cornerstone 2020 Plan Elements:***

#### ***Community Form/Land Use***

#### **Form Districts / Compatibility / Open Space**

**1.B.6 Regional Center Form Districts** are distinguished by a mixture of high intensity land uses that are most appropriately located on or near major arterials, state roadways, or interstate highways. Furthermore, a high level of transit access is desirable and development should be compact. The site plan should encourage pedestrian activity with human-scale design. Redevelopment and infill development are encouraged in Regional Centers.

**3.1, 3.2, 3.4, 3.9, 3.23, 3.24 Compatibility** for the proposed development should be appropriate in scale, site design, and the pattern of development with adjacent developments. When assessing compatibility, the consideration of appropriate building materials is of importance for non-residential development projects. Non-residential expansion into residential areas is discouraged unless the applicant can demonstrate how the adverse impacts of traffic, parking, signage, lighting, noise, odor, and stormwater-runoff will be mitigated. Furthermore, visual impacts of the proposed development should be mitigated when appropriate by protecting the character of residential areas, roadway corridors, and public spaces from visual intrusions. Setbacks, lot dimensions, and building design features should be compatible with adjacent development in the vicinity and should comply with form district guidelines. Ensure that signs are compatible with the pattern of development in the form district and contribute to the visual quality of the area by promoting signage dimensions that are appropriate and adequate for both safety and communication purposes.

**4.1, 4.2, 5.1 Open Space and Natural Resources** should be protected through innovative design features, which should provide natural, cultural, and recreational resource protection, safety and public health needs, and compatibility between land uses of differing intensities. The continued maintenance of open spaces should be provided and the development should respect the natural features of the site with sensitive design elements that avoids changes to the topography while minimizing potential damage and environmental degradation. Encourage development to avoid wet or unstable soils where the potential for severe erosion problems exist.

### ***Marketplace***

**6.6 Activity Centers** that generate high volumes of traffic should be located at the intersection of minor arterials or on a major arterial with good access to the commercial development where nuisances and activities will not adversely affect adjacent areas. Economic growth and sustainability are positive elements of the community and commercial uses are encouraged to be located in established activity centers. The proposed development is a desirable addition to the area.

### ***Mobility/Transportation***

**7.1, 7.2, 8.11, 9.1 Impact of Development** proposals should be evaluated for their impact on the street and roadway systems and air quality to ensure that new developments bear and/or share in the costs of the required public facilities and services for the construction of these developments. In addition, street improvements and other transit solutions are required to mitigate the impacts of the proposed development. The internal circulation pattern within a development should be designed to ensure functional connectivity between structures and surrounding areas and development proposals should provide a safe and appropriate design for the movement of pedestrians, bicyclists, and transit users.

### ***Livability / Environment***

**10.1, 11.1, 12.1, 12.2, 13.4, 13.5, 13.6 Impact to Watershed, Water and Air Quality, and Landscape Character** efforts should be taken to effectively mitigate potential negative impacts to the watershed and the capacity to transport stormwater by discouraging changes to natural channels and drainage features. In addition, methods should be taken to ensure the protection of surface and subsurface areas that have the potential to be used as sources of the water supply system. Furthermore, consider the impact of traffic from the proposed development on air quality and mitigate sources of pollution through measures that reduce traffic. Ensure appropriate landscape design standards are met and provide required screening, buffering, and tree canopy to mitigate adverse impacts from adjacent incompatible uses.

## **Standard of Review**

### **Criteria for granting the proposed rezoning:**

1. The proposed rezoning complies with the applicable guidelines and policies Cornerstone 2020; **or**
2. The existing zoning classification is inappropriate and the proposed classification is appropriate; **or**
3. There have been major changes of an economic, physical, or social nature within the area involved, which were not anticipated in Cornerstone 2020, which have substantially altered the basic character of the area.

### **Criteria for approving the variance:**

1. The proposed variance will not adversely affect the public health, safety or welfare; **and**
2. The proposed variance will not alter the essential character of the general vicinity; **and**
3. The proposed variance will not cause a hazard or a nuisance to the public; **and**
4. The proposed variance will not allow an unreasonable circumvention of the requirements of the zoning regulations.

### **Criteria for approving waiver:**

1. The waiver will not adversely affect adjacent property owners; **and**
2. The waiver will not violate specific guidelines of Cornerstone 2020; **and**
3. The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; **and**
4. Either:
  1. The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); **or**
  2. The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

### **Variance Justification**

The variance will not adversely affect the public health, safety and welfare of the public because a MSD pump station road already exists in this area of the requested variance and was established prior to the current proposal for development of this site as a restaurant. The existing asphalt drive is located in the area of proposed parking and maneuvering. No additional pavement will be added in this area.

The variance will not alter the essential character of the general vicinity because a MSD pump station road already exists on this portion of the site. Existing pavement for MSD's pump station roadway currently exists in this area. Granting of the variance will not cause a hazard or a nuisance to the public because the site is located within a regional center which provides commercial amenities to the community.

Granting of the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because adequate landscaping will be provided on the site. The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought for all the reasons described hereinabove.

### **Waiver Justification**

The waiver will not adversely affect adjacent property owners because parking and maneuvering is being provided in an area already servicing a MSD pump station by an existing roadway and no other user will be using this roadway. Adequate landscape buffers can still be provided on the site to reduce visibility to adjoining residential property. The current adjoining residential property is the subject of a current rezoning case by Jewish Hospital for non-residential use.

The waiver will not violate the Comprehensive Plan because adequate landscaping will be provided on site. The area being affected was designed with minimal parking spaces to reduce the impact on adjoining property owners. The MSD access road existed in this area prior to the proposed development of this site.

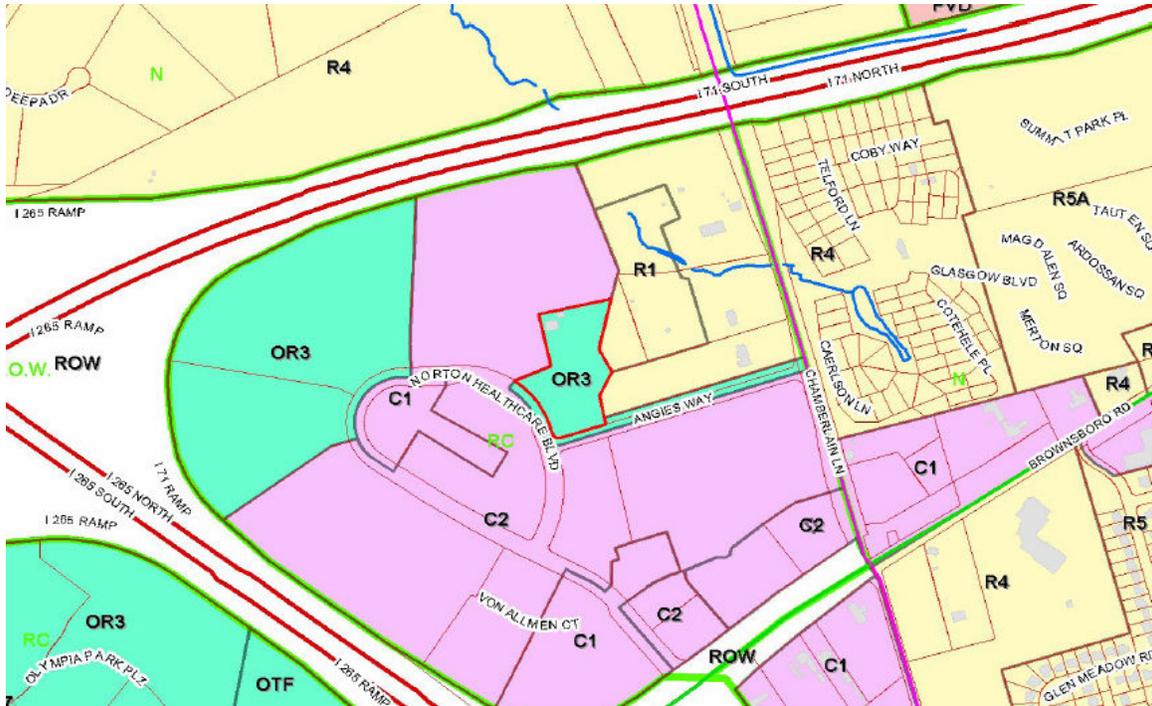
The extent of the waiver of the regulations is the minimum necessary to afford relief to the applicant for all the reasons described herein. The original farmhouse was preserved within the overall development to provide development choices for potential users. With the preservation of the existing house, the developer established an area surrounding the house to preserve existing mature trees. The waiver is also required to provide continued access to the pump station for MSD. The applicant has incorporated other design measures which exceed minimums of the district and compensate for noncompliance with the requirements to be waived because the existing historic residence and mature trees which exist on the site will be preserved. Furthermore, there will remain a tree line along the common property line to the east of the site.

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**Attached Documents**  
**LOJIC Maps**



**Notification**

The following forms of notification were provided pertaining to this proposal:

**Notification**

<b>Date</b>	<b>Description</b>	<b>Recipients</b>
4/16/2007	Notice of Planning Commission hearing	Adjoining property owners and neighborhood group listing.

**Proposed Binding Elements - Docket 9-5-07**

**All binding elements from the approved General Development Plan are applicable to this site, in addition to the following:**

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed **7,600** square feet of gross floor area and 1,450 square feet of outdoor dining on the terrace.
3. Signs shall be in accordance with Chapter 8 or as presented at the public hearing (**40** square feet in area and **5** feet tall).
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
6. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) (**NOTE: to be used for sites within an historic preservation district**) is requested:

- a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
  - b. A minor subdivision plat shall be recorded (**creating the lot lines as shown on the development plan**). A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
  - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
  - d. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
7. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
- ~~8. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system (**audible beyond the property line or permitted on the site**).~~
8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the May 17, 2007 Planning Commission Hearing.

**All binding elements and/or conditions of approval stated in this report are accepted in total without exception by the entity requesting approval of this (these) development item(s).**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date